



## EXECUTIVE DEPARTMENT

### EXECUTIVE ORDER NO. KBB 2004 - 21

#### *BOND ALLOCATION PROCEDURES*

**WHEREAS,** Section 146 of the Internal Revenue Code of 1986 (hereafter “the Act”), as amended (hereafter “the Code”), restricts the total principal amount of certain private activity Bonds which exclude interest from gross income for federal income tax purposes under Section 103 of the Code, including the portion of government use Bonds allocated to non-governmental use as required by the Act (hereafter “Bonds”) which may be issued within the state of Louisiana during each calendar year to a dollar amount determined by (a) multiplying \$75 times the population of the state, based on the most recently published estimate of the population for the state of Louisiana released by the United States Bureau of Census before the beginning of each such calendar year, and (b) multiplying such amount by the cost of living adjustment, as determined pursuant to the Act;

**WHEREAS,** Act No. 51 of the 1986 Regular Session of the Louisiana Legislature (hereafter “Act No. 51 of 1986”) authorizes the governor to allocate the volume limit applicable to the Bonds (hereafter “the ceiling”) among the state and its political subdivisions in such a manner as the governor deems to be in the best interest of the state of Louisiana; and

**WHEREAS,** pursuant to the authorization of both the Act and Act No. 51 of 1986, the governor hereby elects to (a) provide for the manner in which the ceiling shall be determined, (b) establish the method to be used in allocating the ceiling, (c) establish the application procedure for obtaining an allocation of Bonds subject to such ceiling, and (d) establish a system of record keeping for such allocations;

**NOW THEREFORE I, KATHLEEN BABINEAUX BLANCO,** Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

#### **SECTION 1: DEFINITIONS**

- A. Each abbreviation provided in the preamble of this Order, *supra*, shall have the same meaning throughout all the sections, subsections, and paragraphs of this Order.
- B. The following definitions shall apply:
  - 1. “Economic Development Bonds” means all types of Bonds subject to the ceiling other than Industrial Bonds, Housing Bonds, and Student Loan Bonds;
  - 2. “Housing Bonds” means Bonds subject to the ceiling and issued to provide housing described under Section 142(d) of the Code (“Qualified Residential Rental Project Bonds”), or issued to provide housing under Section 143 of the Code (“Qualified Mortgage Bonds”);
  - 3. “Industrial Bonds” means Bonds for manufacturers, as defined by North American Industry Classification System (NAICS) codes 113310, 211, 213111, 541360, 311-339, 511-512 and

54171, or facilities financed as part of the Department of Health and Hospitals' Drinking Water Revolving Loan Fund, which Bonds subject to the ceiling are (1) designated as "exempt facility Bonds" in Section 142(a) of the Code (other than Housing Bonds), or (2) issued for facilities to treat, abate, reduce, or eliminate air or water pollution pursuant to the transition rules of the Tax Reform Act of 1986;

4. "Issuer" or Issuers" means any entity or entities now or hereafter authorized to issue Bonds under the Louisiana Constitution of 1974, as amended, or the laws of the state of Louisiana; and
  5. "Student Loan Bonds" means Bonds subject to the ceiling and issued under the authority of Section 144(b) of the Code.
- C. Any term not defined in this Order shall have the same meaning as in the Act.

## **SECTION 2: DETERMINATION OF CEILINGS FOR 2004 AND THEREAFTER**

- A. The sum of three hundred fifty-nine million, seven hundred six thousand, seven hundred twenty dollars (\$359,706,720) represents the amount of the ceiling determined by the staff of the Louisiana State Bond Commission (hereafter "the SBC staff") for the year of 2004 pursuant to the provisions of the Act.
- B. On or before January 15, 2005, and on or before the fifteenth (15) day of each subsequent calendar year during the life of this Order, the SBC staff shall determine the amount of the ceiling for each calendar year in the manner set forth in the Act. Upon determining the amount of the ceiling, the SBC staff shall promptly notify the governor in writing of the amount determined.

## **SECTION 3: GENERAL ALLOCATION POOL; METHOD OF ALLOCATION**

- A. A pool, designated as the "General Allocation Pool", shall be hereby created. The entire ceiling for each calendar year shall be automatically credited to the General Allocation Pool. Allocations for all types of Bonds that require allocations from the ceiling under the Act may be requested, and granted, from this General Allocation Pool. During the calendar year of 2004, and in each calendar year thereafter, at the discretion of the governor, amounts shall be initially reserved for allocations from the General Allocation Pool as follows:
  1. Until September 1 of each year, an amount equal to fifty (50) percent of the General Allocation Pool shall be reserved for allocations for Housing Bonds;
  2. Until September 1 of each year, an amount equal to twenty-five (25) percent of the General Allocation Pool shall be reserved for allocations for Student Loan Bonds;
  3. Until September 1 of each year, an amount equal to twenty (20) percent of the General Allocation Pool shall be reserved for allocations for Economic Development Bonds; and
  4. Until September 1 of each year, an amount equal to five (5) percent of the General Allocation Pool shall be reserved for allocations for Industrial Bonds.
- B. On September 1 of each year, any amounts remaining and not allocated for the purposes described in Section 3(A) (1) through (4) shall be

combined, and allocations from such amounts remaining shall be granted, at the discretion of the governor, without regard to any reservation for particular use.

- C. The allocation of the ceiling from the General Allocation Pool shall be considered by the governor on the basis of criteria established by the governor.
- D. The issuance of an executive order by the governor, awarding a portion of the ceiling to a particular issue of Bonds, shall be evidence of each allocation granted pursuant to this Order. A copy of such an executive order shall be promptly furnished to the Louisiana State Bond Commission.

**SECTION 4: APPLICATION PROCEDURE FOR ALLOCATIONS**

- A. All issuers in and of the state of Louisiana may apply for allocations.
- B. An issuer who proposes to issue Bonds for a specific project or purpose must apply for an allocation of a portion of the ceiling for the particular project or purpose by submitting an application to the SBC staff. The application form, if any, may be revised from time to time at the discretion of the governor. However, at a minimum, all applications must contain the following information:
  - 1. The name and the address of the issuer of the Bonds;
  - 2. In the case of Bonds, other than Student Loan Bonds or Qualified Mortgage Bonds, the name and mailing address of (1) the initial owner or operator of the project, (2) an appropriate person from whom information regarding the project can be obtained, and (3) the person to whom notification of the allocation should be made;
  - 3. If required by the Code, the date of adoption by the issuer of an inducement resolution adopted for the purpose of evidencing “official intent”;
  - 4. The amount of the ceiling which the issuer is requesting be allocated for the project or purpose of the application, including, without limitation, a statement of the minimum amount of allocation that will support the issuance of the Bonds and a general description of the project (including the address or other description of its location) or the purpose to be financed; and
  - 5. In the case of Housing Bonds for Qualified Residential Rental Project Bonds, the following criteria must be included on the application for the project:
    - (a) Identify whether the project promotes neighborhood revitalization and/or in-fill development, including new development on vacant or adjudicated properties, and whether the buildings are complimentary to the existing architecture in the neighborhood;
    - (b) Identify whether the project is for scattered site single-family units, or, if the project is for a multiple unit dwelling or dwellings, the number of buildings in the project and the number of units that each dwelling contains;

- (c) Identify whether the project is located proximate to a central business district or within a targeted area within the meaning of the Internal Revenue Code of 1986, as amended;
  - (d) Identify whether the project leverages other governmental or private equity funds and/or governmental incentives, and, if so, what the sources and amounts are; and
  - (e) Identify whether a workforce training program is a component of the project's development plan.
6. In the case of Industrial Bonds and Economic Development Bonds requested for manufacturing purposes, the following criteria must be included on the application:
- (c) Identify the North American Industrial Classification System code reported to the federal government and the Department of Labor;
  - (d) Report the economic impact over ten years as determined by the Department of Economic Development;
  - (e) Identify the number of jobs to be created and/or retained and the average salary for both new and retained jobs as well as the amount of the capital investment made or to be made; and
  - (f) Identify other state programs that provide any financial or business incentives as part of this expansion or new location;
7. Either (1) a bond purchase agreement or other written commitment to purchase the Bonds for which an allocation is requested, executed by one or more purchasers, setting forth in detail the principal and interest payment provisions and the security for the Bonds, accepted by the issuer or the beneficiary of the Bonds; (2) in the case of a public offering of the Bonds for which the allocation from the ceiling is requested, a binding bond purchase or underwriting agreement obligating the underwriter or underwriters to sell or purchase the Bonds within ninety (90) days of the receipt of an allocation, setting forth in detail the proposed principal and interest payment provisions and the security for the Bonds, accepted by the issuer or the beneficiary of the Bonds; or (3) a \$7,500 escrow deposit which will be forfeited in the event the Bonds for which an allocation is granted are not delivered prior to the expiration of such allocation as provided in Section 4(E). The \$7,500 escrow deposit shall be returned to the party depositing the same without interest upon the substitution of the items described in (1) or (2), *supra*, or delivery of the Bonds within the allocation period. In the event that such Bonds are not delivered within the allocation period, the deposit shall be forfeited and deposited in the State Treasury, unless the failure to deliver such Bonds is the result of the Louisiana State Bond Commission denying approval of such Bonds, in which case the deposit shall be returned to the party depositing same, without interest;
8. A specific date as to when the bond allocation is required and when the project financing is intended to close;

9. A schedule showing the project time or projected timing of the use of the bond proceeds;
  10. Information necessary to evidence compliance with the criteria established by the governor; and
  11. A letter from bond counsel, addressed to the governor, expressing that the Bonds for which an allocation is requested are subject to the ceiling.
- C. Upon receipt of the application required by Section 4(B), the SBC staff shall determine if the requirements of Section 4(B) have been met. When it is determined the requirements have been met, the SBC staff shall immediately forward a copy of the application to the governor.
- D. Until September 1 of each year, the maximum amount of allocation that may be granted for any project or purpose in any calendar year (other than for Qualified Mortgage Bonds issued by the Louisiana Housing Finance Agency or Student Loan Bonds) shall not exceed the greater of thirty million dollars (\$30,000,000) or fifteen (15) percent of the ceiling for that year. If an issuer submits a request for an allocation that is in excess of this authorized amount, the SBC staff shall retain the application for consideration of the allocation of additional amounts, which may only be granted on or after September 1 of that year.
- E. Any allocation from the ceiling (other than carry forward allocations described in Section 4(H), *infra*) shall expire unless the Bonds receiving the allocation are delivered by the earlier of (1) ninety (90) days from the date of notice of allocation is mailed to the person designated, or (2) December 27th of the calendar year granted. In the event the allocation of the ceiling for a particular project or purpose expires as provided in this section, the issuer may resubmit its application for an allocation of a portion of the ceiling for such project or purpose. The application of the issuer relating to such project or purpose shall be reviewed in chronological order of receipt of the resubmission.
- F. On September 1 of each year, the SBC staff shall determine the remaining amounts of the ceiling and shall submit to the governor for consideration all applications for allocations of Bonds in excess of the permitted amounts.
- G. The SBC staff shall maintain accurate records of all allocations and all Bonds delivered. All issuers of Bonds that have received an allocation shall notify the SBC staff of the delivery of Bonds within five (5) days after the delivery of such Bonds and shall specify the total principal amount of Bonds issued. The SBC staff shall provide to any person so requesting, within a reasonable time: (1) the amount of unallocated ceiling remaining on the date such request is made; (2) a list of allocations (naming the issuer and amount of allocation) which have been made and the date of each allocation; (3) a list of applications being held by the SBC staff which have requested a larger allocation than permitted; and (4) a list of Bonds which have been given an allocation and have been delivered.
- H. If the ceiling exceeds the aggregate amount of Bonds issued during any year by all issuers, the governor may allocate such to issuers for use as a carry forward for one or more carry forward projects permitted under the Act by issuing an executive order for all carry forward projects for which an application has been submitted that contains the elements required by Section 4(B), and for which a request to be treated as a carry forward project has been received by the SBC staff. The SBC staff shall

notify the issuers which are allocated a portion of the ceiling for a carry forward project at least five (5) days prior to the last date an election to carry forward a portion of the ceiling may be made.

- I. This Order only relates to Bonds subject to the private activity bond volume limitation set forth in the Act. No issuer shall apply for or be entitled to an allocation from the ceiling for Bonds that are not subject to the private activity bond volume limitation set forth in the Act.
- J. The governor may modify, amend, supplement, or rescind this Order to reflect any change in federal or state legislation; provided, however, that any modification, amendment, supplementation or rescission shall not rescind any allocation granted for a project or purpose pursuant to the terms of this Order if such allocation is required under federal law in order to maintain the tax-exempt status of the Bonds issued for such project or purpose.
- K. Notwithstanding any provision in this Order to the contrary, if the governor determines it to be in the best interest of the state of Louisiana, because a project or purpose serves a crucial need or provides an extraordinary benefit to the state of Louisiana or to an area within the state of Louisiana, through the issuance of an executive order, the governor may authorize allocations in any amount or grant any or every portion of the ceiling, and for any purpose.

**SECTION 5: MISCELLANEOUS PROVISIONS**

- A. The responsibility of the SBC staff as set forth in this Order shall be exercised by the SBC staff independent of any of its other duties and responsibilities owed to the Louisiana State Bond Commission.
- B. The governor will certify in each executive order that grants a portion of the ceiling to a particular issue of Bonds that said bond issue meets the requirements of Section 146 of the Code.
- C. This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

**IN WITNESS WHEREOF**, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 11th day of July, 2004.

Kathleen Babineaux Blanco  
**GOVERNOR OF LOUISIANA**

**ATTEST BY  
THE GOVERNOR**

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**SECRETARY OF STATE**